(40) (39)

HIGH COURT OF CHHATTISGARH AT BILASPUR

M.A.(C). No. 637/2006

Single Bench: Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Appellant Defendant No.3	:	The New India Assurance Company Ltd. (Wrong written as "New India Insurance Company Limited), through – Branch Manager, Paarakh Bhawan, Station Road, Durg, Tahsil and District Durg.
		Versus
Respondent Claimant	:	1. Banshilal alias Moti son of Ramadheen Satnami, aged about 50 years, resident of Auri, Tah. Paatan, District Durg (CG)
Respondent Defendant No.1	:	2. Rohit Kumar, son of Ramnarayan Sahu, aged about 20 years, resident of Dundera Tahsil and District Durg (Chhattisgarh
Respondent Defendant No.2	:	3. Ram Narayan, Son of Nathuram Sahu, aged about 50 years, resident of Dundera, Tahsil and District Durg (CG)

Present: Shri Prashant Jaiswal, Senior Advocate with Shri Sankalp Jailswal, counsel for the appellant.

ORAL ORDER

(Passed on 15th March, 2007)

The following oral order of the Court was passed by **Dilip Raosaheb Deshmukh, J.**

Heard on M.(C).P.No.2307/2007 for condonation of delay in filing this appeal.

(2) For the reasons mentioned in the application, M.(C).P.No.2307/2007 is allowed and delay in filing this appeal is condoned.

(3) Also heard on admission.

(4) It is not disputed that the respondent No.2 herein possessed a valid driving license for driving light motor vehicle at the time of the accident. It is also not disputed that the vehicle in question was under valid policy of insurance by the appellant at the time of accident. The factum of injury being caused to respondent No.1 Banshi lal @ Moti and the quantum is also not in dispute.

(5) Learned senior counsel for the appellant impugned the award only on the ground that the Insurer was not liable to pay compensation since there was clear breach of policy of insurance by the owner as the driver of the offending vehicle did not possess a valid driving licence for driving a heavy motor vehicle.

(6) Having heard learned senior counsel for the appellant, I have perused the impugned award. Under Section 2 (21) of the Motor Vehicles Act, 1988, a light motor vehicle means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed [7,500] kilograms. Paragraph 12 of the impugned award, it clearly shows that the permit and registration certificate of the minibus revealed that the unladen weight of the minibus was 2225 kilograms and the gross weight was 5300 kilograms. In this view of the matter, the offending vehicle falls within the category of a light motor vehicle. Thus, in view of the undisputed facts mentioned in paragraph 4 (supra), the appeal fails. In view of the decision of the Apex Court rendered in **National Insurance Co. Ltd. Vs. Swaran Singh and others** reported in **2004 AIR SCW 663**, it is now well settled that breach of any condition of the policy of insurance, if not fundamental in nature and not contributed to the accident, does not absolve the insurer from its liability to pay compensation.

(7) There is no merit in this appeal which is accordingly dismissed at the stage of admission.

In view of the above, M.(C).P.No.2306/2006 for grant of stay stands disposed of.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Tumane